DOCKET NO.: NNH-CV17-6072389-S	:	SUPERIOR COURT
	:	
ELIYAHU MIRLIS	:	J. D. OF NEW HAVEN
	:	
v.	:	AT NEW HAVEN
	:	
YESHIVA OF NEW HAVEN, INC. FKA THE GAN, INC. FKA THE GAN SCHOOL, TIKVAH HIGH SCHOOL AND YESHIVA OF NEW HAVEN, INC.	:	OCTOBER 7, 2021

PLAINTIFF'S (1) REPLY IN FURTHER SUPPORT OF MOTION TO RESET LAW DAY AND (2) OBJECTION TO REQUEST TO STAY PROCEEDINGS AND MOTION TO SUBSTITUTE BOND

The plaintiff, Eliyahu Mirlis ("Plaintiff"), by and through his undersigned counsel, respectfully submits his reply in further support of his Motion to Reset Law Day after Appeal (Doc. No. 146) (the "Motion to Reset") and objection to the pleading entitled Defendant's (1) Objection to Motion to Reset Law Days and Stay Proceedings and (2) Motion to Substitute Bond (Doc. No. 147) (the "Objection and Third Motion to Substitute"), filed by the defendant, Yeshiva of New Haven, Inc. fka The Gan, Inc, fka The Gan School, Tikvah High School and Yeshiva of New Haven, Inc. ("Defendant"). The relief sought and arguments made in the Objection and Third Motion to Substitute are without merit and are simply another in a long line of frivolous delay tactics by Defendant in this action and others. Defendant had ample opportunity to post a bond in lieu of Plaintiff's judgment lien prior to the entry of the foreclosure judgment, but it failed to do so. It no longer has any right to post a bond in this case upon the entry of judgment.

Moreover, and even assuming arguendo that it somehow still had the right to post a bond post-judgment despite dispositive Supreme Court authority to the contrary, Defendant admits that it lacks the financial ability to post a bond. Instead, it relies upon speculative future actions by third parties to boldly suggest that the Court yet again delay enforcement of the judgment lien based on a federal court judgment because it might be able to post a bond at some undetermined time in the

future. The continued delay sought by Defendant runs counter to the interests of equity and justice to Plaintiff and only would serve to further and substantially prejudice Plaintiff, who has been paid only a very small fraction of his $22 million judgment against Defendant (none of it voluntarily without additional litigation), and give Defendant continued use of the subject property without any basis to do so. To underscore its futility, Defendant boldly asks the wrong court for a stay. To the extent it believes that enforcement of the federal court judgment should be stayed while it seeks to vacate that judgment, Defendant should seek that relief in federal court and not ask the state court take an action regarding the enforcement of a lien resulting from that federal judgment. Plaintiff, therefore, respectfully submits that the Court should grant the Motion to Reset, setting the shortest possible law day, and deny the relief sought by Defendant. In support of this reply and objection, Plaintiff states as follows:

I. Relevant Factual and Procedural Background[1]

A. The Underlying Action against Defendant and Daniel Greer Based upon Daniel Greer's Sexual Abuse of Plaintiff

While he was a minor student at a school operated by Defendant, Plaintiff was repeatedly sexually abused and assaulted by Daniel Greer ("D. Greer") Defendant's president and school principal. On June 6, 2017, following a jury trial in *Eliyahu Mirlis v. Daniel Greer et al.*, 3:16-cv-00678 (D.CT) (the "Underlying Action"), the Plaintiff was awarded $21,749,041.10 in damages against D. Greer and the Yeshiva to compensate him for the harm he suffered (hereinafter the "Judgment"). The Judgment was subsequently affirmed on March 3, 2020, by the United States Circuit Court of Appeals for the Second Circuit. *See Mirlis v. Greer*, 952 F.3d 36 (2d Cir. 2020). The Yeshiva and D. Greer have gone to great lengths to ensure that the Plaintiff never recovers

[1] Plaintiff set forth detailed facts and procedural history of this case in the Motion to Reset, which he will not repeat here except as necessary.

any of the millions of dollars owed to him. In fact, Plaintiff has collected less than $240,000.00 from the Yeshiva and D. Greer since the entry of the Judgment, and then, only through executions and extensive litigation.

As Defendant states in the Objection and Third Motion to Substitute, Defendant and D. Greer filed a second motion to set aside the Judgment in the Underlying Action on June 8, 2021 – more than a year after the Second Circuit affirmed the Judgment and more than four years after the Judgment was entered (the "Second Motion to Set Aside"). The Second Motion to Set Aside is completely frivolous, and does not seek to set aside the Judgement, but instead seeks an evidentiary hearing to test some implausible theory based on facts that were known to counsel and the District Court at the time of the trial in the Underlying Action. Indeed, the Second Motion to Aside is a classic fishing expedition through which Defendant and D. Greer hope to find some basis to set aside the judgment, they will not. For a full discussion of the Second Motion to Set Aside, see attached as **Exhibit A** Plaintiff's Opposition to Defendants' Second Motion for Relief from Final Judgment ("Objection to Second Motion to Set Aside"). (Underlying Action, Doc. No. 403.)

B. This Foreclosure Action

Plaintiff commenced this foreclosure action on July 21, 2017, more than ***four*** years ago, against Defendant, seeking to foreclose a judgment lien (the "Judgment Lien") recorded on the property known as 765 Elm Street, New Haven, Connecticut (the "Property"). Plaintiff moved for summary judgment as to liability on November 8, 2017. Defendant did not oppose the summary judgment motion and it was granted on January 16, 2018. Doc. No. 104.10. Also on January 16, 2018, Defendant filed a Motion for Discharge of Judgment Lien on Substitution of Bond (Doc. No. 106) (the "First Motion to Substitute"), seeking to have the Court substitute a "cash bond for

the Property in the amount of the fair market value of the Property[.]" (First Motion to Substitute, p.3.)

On June 5, 2019, Plaintiff filed his Motion for Judgment of Strict Foreclosure (Doc. No. 113) (the "Motion for Judgment") and an appraisal report of the Property. In response, Defendant filed Defendant's (1) Objection to Motion for Judgment of Strict Foreclosure, (2) Motion to Discharge Judgment Lien and Substitute Bond, and (3) Motion to Continue hearing on Motion for Judgment of Strict Foreclosure (Doc. No. 115) (the "Objection and Second Motion to Substitute"), seeking, *inter alia*, to have the Motion for Judgment denied because of a dispute as to the value of the Property and because Defendant argued it should be able to post a bond to discharge the Judgment Lien.

Following an evidentiary hearing, on October 28, 2019, and December 9, 2019, the court found the value of the Property to be $620,000.00 and permitted the substitution of a bond by Defendant. *See* Memorandum of Decision: Hearing on Valuation, Doc. No. 133.00 (the "Valuation Decision"). Thereafter, on March 9, 2020, the Court entered a judgment of strict foreclosure (the "Foreclosure Judgment") against Defendant, finding, *inter alia*, the amount of the debt to be $22,167,939.41 and the fair market value of the Property to be $620,000.00 and setting a law day for June 1, 2020. At no point before the Foreclosure Judgment entered did Defendant ever seek to actually post a bond, or take any known action to post a bond, to substitute for the Judgment Lien. Notably, Defendant appealed only the court's determination of the Property, but did **not** appeal the Foreclosure Judgment.

After the Appellate Court affirmed the Foreclosure Judgment on appeal and Defendant's petition for certification to the Supreme Court was denied; *see Mirlis v. Yeshiva of New Haven, Inc.*, 205 Conn. App. 206, *cert. denied*, 338 Conn. 903 (2021); Plaintiff filed the Motion to Reset

pursuant to Practice Book § 17-10, asking that the Court set a new law day after appeal, and that the law day be the shortest possible because of the delays caused by Defendant. After 4:30 PM on the Friday before the Motion to Reset was scheduled for short calendar, Defendant filed the Objection and Third Motion to Substitute. Defendant now seeks an order from this Court denying the Motion to Reset and staying this matter indefinitely so that i) the District Court can rule on a Motion to Modify Temporary Restraining Order (the "Motion to Modify") filed in *Mirlis v. Edgewood Elm Housing, Inc.*, 3:19-cv-700 (D. Conn.) (the "Veil Piercing Action"), which could theoretically provide funds for a bond, and ii) the meritless Motion to Set Aside can be decided.

C. <u>The Veil Piercing Action against Entities Dominated and Controlled by D. Greer</u>

Plaintiff filed the Veil Piercing Action on May 8, 2019, seeking to hold the defendants therein, Edgewood Elm Housing, Inc., F.O.H., Inc., Edgewood Village, Inc., Edgewood Corners, Inc., and Yedidei Hagan, Inc. (collectively, the "Veil Piercing Defendants"), liable for the Judgment in the Underlying Action against Defendant and D. Greer. Among other things, Plaintiff contends based upon post-judgment discovery in the Underlying Action[2] that Defendant and D. Greer have used their domination and control over the Veil Piercing Defendants, entities that operate as a single enterprise (the "Enterprise") with no separate identities, to hold and acquire income generating real property and then incrementally pay the generated income to D. Greer, his wife, Sarah Greer ("S. Greer"), and Defendant.

Defendants moved to dismiss the Veil Piercing Action soon after it was filed pursuant to Fed. R. Civ. P. 12(b)(6) (the "Motion to Dismiss"). Following briefing and oral argument, on July 30, 2020, the District Court issued its Ruling on Defendants' Motion to Dismiss Complaint (Veil

[2] While Plaintiff has obtained discovery in the Underlying Action, he has not had an opportunity to conduct discovery in the Veil Piercing Action, and by this Reply, in no way means to suggest otherwise or waive any of his rights to take such discovery.

Piercing Action, Doc. No. 38, attached hereto as **Exhibit B**) (the "Ruling"), denying the Motion to Dismiss. The District Court found, *inter alia*:

> The pleaded facts also state a plausible claim that Daniel Greer used his dominance and control of the five Defendants to perpetrate fraud or a wrong which proximately caused injury to Plaintiff. According to those facts, Greer manipulated the corporate Defendants in such a manner that the residential property rent monies collected by the Upstream Entities were funneled to the Downstream Entities, and thereafter distributed to Daniel Greer and the Yeshiva (defendants in the Underlying Action), as well as to Daniel's wife, Sarah Greer. The effect of these arrangements was to assure Daniel Greer and the Yeshiva income streams, while leaving them without assets to pay creditors, including the judgment Plaintiff obtained against them.

(Ruling, p.23.)

After Plaintiff uncovered the Enterprise and sought to enforce the Judgment against its assets via veil piercing, the Veil Piercing Defendants began to sell their assets to put them out of Plaintiff's reach and further ensure that he can never recover. Indeed, Plaintiff learned that on July 12, 2020, Edgewood Village, Inc. sold the property located at 928 Elm Street, New Haven, Connecticut to Pendleton Properties, LLC for $255,000.00, and that it subsequently listed 727 Elm Street, New Haven, Connecticut for sale for $265,000.00. Moreover, the Veil Piecing Defendants have transferred hundreds of thousands of dollars to Defendant and D. Greer or on their behalf in just the two years prior to entry of the TRO (as defined below), including approximately $200,000.00 to D. Greer (even after he was incarcerated after being found guilty of sexually assaulting Plaintiff) as salary and benefits, over $150,000.00 for D. Greer's legal bills, and over $630,000.00 to Defendant in nearly 400 separate payments. Plaintiff expects that discovery will uncover further transfers. These transfers have been made in such a way to prevent the collection of the Judgment as they are mostly made incrementally and rarely (if at all) stay in Defendant's or D. Greer's accounts for more than a day.

On August 21, 2020, Plaintiff filed his Application for Temporary Injunction and for Prejudgment Remedy (Doc. No. 41) (the "PJR Application") in the Veil Piercing Action, seeking a prejudgment remedy and a temporary restraining order pursuant to Conn. Gen. Stat. § 52-278c(c) enjoining Defendants from transferring assets pending a ruling on the PJR Application. On August 25, 2020, the Court entered the Temporary Restraining Order (Doc. No. 43, attached hereto as **Exhibit C**) (the "TRO"), enjoining most transfers of assets by Defendants pending a decision by the Court on Plaintiff's PJR Application. The TRO remains in effect.[3]

On September 24, 2021, the Veil Piercing Defendants filed their Motion to Modify, seeking to modify the TRO in two specific ways. First, they seek to allow the Veil Piercing Defendants to pay the legal fees and expenses of D. Greer and the Yeshiva even though all of those fees and expenses arise out of D. Greer's sexual abuse of Plaintiff and there is no legal, moral or even colorable basis to make those payments. Second, the Veil Piercing Defendants seek to modify the TRO so that the Veil Piercing Defendants can pay for a cash bond to substitute for the Judgment Lien in this case. However, the Veil Piercing Defendants do not provide any evidence that they presently have sufficient funds to post a bond and suggest that they may need to sell real property to pay for the proposed bond. (Motion to Modify, p.3, n.2.)

II. Law and Argument

A. Defendant's Rights to Post a Bond in Lieu of the Judgment Lien Ended Once the Foreclosure Judgment Entered under Prevailing Supreme Court Precedent and That Judgment Was Not Appealed

It is beyond peradventure that once the Foreclosure Judgment was entered in this action, Defendant's right to substitute a bond for the Judgment Lien ended. *Hartford Electric Light Co. v.*

[3] The Veil Piercing Defendants have moved for summary judgment in the Veil Piercing Action. Plaintiff has yet to take any discovery in the Veil Piercing Action and at the District Court's direction will respond to the summary judgment motion to the extent possible, while also identifying the specific discovery that is necessary to allow for a full and complete response.

Tucker, 183 Conn. 85, 89-90 (1981). Defendant's contention that the Motion to Reset should be denied, or this action should be stayed, so that third-parties can possibly raise funds to substitute a potential bond, is therefore meritless. Defendant lost its right to post a bond in this action though inaction and waived any challenge to the Foreclosure Judgment. Thus, the Court should grant the Motion to Reset and deny the Objection and Third Motion to Substitute to the extent it seeks to substitute a bond or stay this action.

The requirement that substitution of a bond for a judgment lien must occur prior to the entry of a judgment is well-settled:

> While a putative debtor may have a constitutionally protected right to substitute a bond for a lien *before* there has been a judgment against him, he has no such right, under the cases and the statutes, *after* there has been a judgment, upon a hearing, affirming his indebtedness. Our statutes permitting dissolution of a lien upon the substitution of a bond are addressed, as were the statutes involved in the Supreme Court cases, to prejudgment liens. See General Statutes §§ 52-304 (attachment lien) and 49-37 (mechanic's lien).

Hartford Electric Light Co., 183 Conn. at 89-90. Although its knowledge of the law is not relevant to this determination, it is worthy to note that Defendant is and was fully aware of its requirement to substitute a bond before the entry of judgment, and was adamant in its Objection and Second Motion to Substitute that it had to substitute a bond for the Judgment Lien ***before*** the Foreclosure Judgment entered. ((Objection and Second Motion to Substitute, p.5) ("However, the Yeshiva is clearly allowed to avoid entry of a foreclosure judgment against it and discharge the underlying lien. Thus, adjudication of the Motion to Substitute ***must be decided prior to the Strict Foreclosure Motion***.") (emphasis added).) For reasons known only to it, Defendant chose not to substitute a bond in place of the Judgment Lien or to ultimately appeal the Foreclosure Judgment, despite the fact that the Court permitted it to post a bond before the entry of judgment of strict foreclosure. (*See* Valuation Decision.)

The requirement that substitution of a bond must occur prior to the entry of a foreclosure judgment is consistent with the realities and equities of the judicial process and makes perfect sense. Defendant was provided with the ability to post the bond contemporaneously with the valuation of the Property and prior to the entry of the Foreclosure Judgment. In this case, the valuation was based on appraisal originally submitted to the Court earlier in 2019 and testimony regarding those reports. Further delay prejudices Plaintiff because the bond amount is established prior to entry of judgment and delay after judgment affects the value of the Property, but would not affect the amount of the bond under Defendant's conjecture. Apart from being contrary to the *Tucker* Rule as set forth above, it is also contrary to equitable principles.

First, in this case, Defendants are judicially estopped from making such a claim. Its position today that it can post a bond post-judgment is contrary to its position earlier in this case that the Court presumably relied upon in granting its motion to post a bond prior to entry of the Foreclosure Judgment. Moreover, Defendants' logic would result in perverse consequences that would create in an endless knot or infinite loop of litigation. Indeed, two related and equally vexing problems would arise. First, the Valuation Decision, finding the value of the Property to be $620,000.00, was made over a year-and-a-half ago, on February 24, 2020. It is not an accurate reflection of the current value of the Property. Plaintiff believes the value of the Property has substantially increased in that time, in which case a bond of $620,000.00 would not adequately compensate Plaintiff for the value of the Judgment Lien as required by the statute. *See* Conn. Gen. Stat. § 52-380e (". . . the judgment debtor may apply to the court to discharge the lien on substitution of (1) a bond with surety or (2) a lien on any other property of the judgment debtor ***which has an equal or greater net equity value than the amount secured by the lien***.") (emphasis added). The problem of aged appraisals, which do not represent the present value of a property, is recognized in the context of

deficiency judgments where the foreclosure appraisal is irrelevant and the value of the subject property must be determined at the time that title vests in the plaintiff. *See First Fed. Bank v. Gallup*, 51 Conn. App. 39, 42-43 (1998) (holding that trial court erred in considering appraisal valuing property fifteen (15) months prior to title vesting).

However, simply permitting another valuation determination after an appeal leads to the second related problem with permitting substitution of a bond after judgment has entered – a potentially endless loop of revaluations and appeals. If the Court were to permit substituting a bond after judgment and after the delay caused by an appeal, fairness and Conn. Gen. Stat. § 52-380e would require that current value of the Property be determined in order to determine adequate substitution. If either party did not agree with the Court's finding of value, it presumably could appeal that valuation. Then, no matter the outcome of the appeal, the Property would have to be revalued, and a subsequent appeal could be taken. It is easy to see that this process could continue *ad infinitum*, which is clearly prejudicial to the rights of Plaintiff, who may never get title to the Property unless Defendant runs out of an appetite (unlikely) or money for further litigation. The Court should not countenance this perverse scenario. Not only would Plaintiff clearly be prejudiced, but allowing the substitution of a bond and a new valuation after the Foreclosure Judgment, which is final and no longer appealable, is contrary to the "'compelling interest in the finality of judgments.'" *See Ruiz v. Victory Props., LLC*, 180 Conn. App. 818, 828 (2018) (quoting 46 Am. Jur. 2d 543-44, Judgments § 164 (2017).

When Defendant appealed the valuation determination, it did not appeal the entry of judgment. In fact, it did not even object to the entry of judgment in the first place or challenge the timing or other matters associated with the bond. Thus, as the Appellate Court noted, Defendant

waived any right to argue that the foreclosure judgment should not have entered because it failed to properly raise that argument:

> We are compelled to note that, in its principal appellate brief, the defendant also argues that this court "should reverse the foreclosure judgment," stating in full: "Since the defendant has an absolute right to substitute a bond in lieu of the judgment lien, the foreclosure judgment should not have entered. . . . The plaintiff did not appeal this decision of the trial court." (Citation omitted.) The defendant has provided neither legal authority nor analysis to substantiate that bald assertion. "[Our Supreme Court] repeatedly [has] stated that [w]e are not required to review issues that have been improperly presented to this court through an inadequate brief. . . . Analysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly." . . . We therefore decline to review that abstract assertion.

Mirlis, 205 Conn. App. at 212 (citations omitted). Defendant had its chance to challenge the entry of the Foreclosure Judgment, but it failed to do so. It thus cannot now complain that its right to substitute a bond has terminated as a result of the entry of judgment.

Following an appeal affirming a judgment, the judgment is effective retroactive to the date of entry by the trial court. *Callahan v. Callahan*, 192 Conn. App. 634, 663 (2019). "[I]f the trial court's judgment is sustained, or the appeal dismissed, the final judgment ordinarily is that of the trial court." *Id.* Thus, since the Foreclosure Judgment of this Court was affirmed on appeal, that is the operative final judgment in this case. Defendant failed to appeal, or even oppose, the entry of the Foreclosure Judgment, and it never substituted a bond for the Judgment Lien before the Foreclosure Judgment entered, despite the fact that it first identified its intention to do so in the First Motion to Substitute filed on January 16, 2018, and knew that it had to do so prior to the entry of the Foreclosure Judgment. Therefore, Defendant has no right to substitute a bond here because the Foreclosure Judgment is final and not subject to further appeal.

In the Motion to Reset, Plaintiff seeks the limited relief of resetting the law day after an appeal pursuant to Practice Book § 17-10, which provides "specific authority for the trial court to

set new law days if the court's judgment is affirmed on appeal." *RAL Mgmt. v. Valley View Assocs.*, 278 Conn. 672, 684 (2006). In *FDIA v. Boston Post Ltd. Pshp.*, 1998 Conn. Super. LEXIS 1682, at *3-4 (June 16, 1998), the trial court considered, without reference to Practice Book § 17-10, whether it could modify a judgment of strict foreclosure for the limited purpose of resetting the law days under Conn. Gen. Stat. § 49-15 and held that it could:

> General Statutes 49-15 provides, "any judgment foreclosing the title to real estate by strict foreclosure may, at the discretion of the court rendering the same, upon the written motion of any person having an interest therein, and for cause shown, be opened and modified, notwithstanding the limitation imposed by Section 52-212a, upon such terms as to costs as the court deems reasonable; but no such judgment shall be opened after the title has become absolute in any encumbrancer." (Emphasis added.)
> The statute specifically permits the court to modify the judgment. It does not require the court to vacate the entire judgment. Black's Law Dictionary, 6th Edition, defines a modification as "[a] change; an alteration or amendment which introduces new elements into the details, or cancels some of them, but leaves the general purpose and effect of the subject-matter intact."

Id. In *FDIA,* the defendant argued that opening the judgment could not be limited to resetting the law days, but rather, it should be permitted to relitigate as if the original judgment never occurred. The court concluded that "[t]he defendant has not shown cause as to why the plaintiff should be required to reprove its case. A defense to the amount of the debt must be based on an articulated legal reason or fact." *Id.* at *5-6. Thus, a court can reopen, or modify, a judgment for a limited purpose, such as resetting the law days, without opening up the entire judgment and reconsidering everything encompassed within it. The argument for limited modification is even more forceful under Practice Book § 17-10, which only contemplates modifying a judgment for the limited purpose of resetting law days that have run after an appeal was filed.

Even assuming, *arguendo*, that the law permits a defendant to post a bond after foreclosure judgment enters, which it does not, Defendant has not established any basis for it to be permitted to do so in this case. Defendant acknowledges that it does not have the funds to pay for a bond

itself and must rely upon potential future events to provide the funds to do so. Specifically, the District Court would have to grant the Motion to Modify, and modify the TRO at least to the extent that it would allow the Veil Piercing Defendants to pay the amount of the bond. Defendant has not indicated which of the Veil Piercing Defendants would have such funds and has disclosed nothing about the finances of those entities to this Court or the District Court. In fact, the Veil Piercing Defendants suggest that they do not have enough liquid funds to post the proposed bond, and note in the Motion to Modify that they may have to sell real property to pay for the bond. (Motion to Modify, p.3 n.2.).

The Motion to Modify and the Objection and Third Motion to Substitute are obvious delay tactics.[4] The TRO was entered on August 25, 2020, over five months after this Court's order finding value and permitting the substitution of a bond on February 24, 2020. (*See* Valuation Decision.) The Veil Piercing Defendants waited over a year, until after the Motion to Reset was filed, to even seek to modify the TRO. Now, they want this Court essentially to permit them an unspecified amount of time for third-parties possibly to obtain relief from the TRO, and then, even more time for those third parties to sell property to raise funds. The Court should not countenance such blatant attempts to further frustrate collection of the now more than four-year-old Judgment. Defendant has had his day in Court (many times over), and it is now time for this action to be concluded and for title to vest in Plaintiff. Thus, the Motion to Reset should be granted and the affirmative relief sought by Defendant denied.

[4] Plaintiff will oppose the Motion to Modify, and argue, among other things, that granting the Motion to Modify will deplete the potential pool of funds available for Plaintiff to collect should he be successful in the Veil Piercing Action, which was very reason for the TRO in the first place.

B. <u>There Are No Grounds to Stay This Proceeding or Set and Extended Law Day</u>

Defendant has not asserted any grounds sufficient for this Court to stay these proceedings or to set an "extended" law day. As set forth above, Defendant lost its right to seek to substitute the Judgment Lien with a cash bond, and even assuming, *arguendo*, that it did not, Defendant provides no basis for the Court (or anyone else) to believe it has more than a speculative hope of providing a bond at some unspecified future time. Moreover, the baseless Motion to Set Aside does not provide a basis for further delay. Indeed, if Defendant truly believed that the Motion to Set Aside had any merit whatsoever it would have sought a stay of enforcement of the Judgment in the District Court as such a stay would preclude the Plaintiff from foreclosing on his judgment lien. *See* Fed. R. Civ. P. 62(b) ("At any time after judgment is entered, a party may obtain a stay by providing a bond or other security. The stay takes effect when the court approves the bond or other security and remains in effect for the time specified in the bond or other security."). The fact that Defendant did not seek a stay of the Judgment with the District Court is telling..

Plaintiff is fully aware, of course, that it is the District Court, rather than this Court, that must adjudicate both the Motion to Modify and the Second Motion to Set Aside. The issue for this Court is whether it will permit Defendant to hold this action hostage by staying it in response to a motion filed to modify a TRO that entered more than a year-ago and a motion to set aside a final judgment that entered more than four years ago. At some point, Plaintiff must be allowed to enforce his Judgment, and that point is now. Thus, Thus, for the reasons already discussed, Defendant is not entitled to a stay or extended law day, the Court should deny the affirmative relief requested by Defendant, and set the shortest possible law day.

III. Conclusion

WHEREFORE, Plaintiff respectfully requests that the Court grant the Motion to Reset, deny the relief requested by Defendant in the Objection and Third Motion to Substitute, and grant him such other and further relief as justice requires.

THE PLAINTIFF
ELIYAHU MIRLIS

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CERTIFICATION OF SERVICE

This is to certify that service of copies of this Plaintiff's (1) Reply in Further Support of Motion to Reset Law Day and (2) Objection to Request to Stay Proceedings and Motion to Substitute Bond was made via electronic mail on the following appearing defendants and counsel of record in both of the above-captioned consolidated actions:

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EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ELIYAHU MIRLIS,	:	**CIVIL ACTION NO.**
	:	**3:16-CV-00678-AVC**
Plaintiff,	:	
V.	:	
	:	
RABBI DANIEL GREER and YESHIVA OF NEW HAVEN, INC.,	:	
	:	
Defendants.	:	**JUNE 29, 2021**

PLAINTIFF'S OPPOSITION TO DEFENDANTS'
SECOND MOTION FOR RELIEF FROM FINAL JUDGMENT

INTRODUCTION

The defendants make yet another time-barred attempt to undo the jury's May 18, 2017 verdict in this case—this time, more than four years after the fact. This new motion is based on facts that defendants admit were freely discoverable before trial, and which had even been the subject of discussion with the trial court four years ago. And for a second time, they have failed to satisfy any of Rule 60(b)'s requirements for relief from the final judgment. The motion must be denied.

LEGAL STANDARD

"Federal Rules of Civil Procedure 60(b) provides a procedure whereby, in appropriate cases, a party may be relieved of a final judgment." *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 (1988). The Rule states that

> On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
> (1) mistake, inadvertence, surprise, or excusable neglect;
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
> (4) the judgment is void;
> (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
> (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b); *see also Maduakolam v. Columbia Univ.*, 866 F.2d 53, 55 (2d Cir. 1989). "A motion for relief from judgment is generally not favored and is properly granted only upon a showing of exceptional circumstances. . . . The burden of proof is on the party seeking relief from judgment." *United States v. Int'l Bhd. of Teamsters*, 247 F.3d 370, 391 (2d Cir. 2001) (hereinafter *Teamsters*). And "[w]here . . .the movant fails to make even a 'colorable claim' for Rule 60(b)relief, the district court is not required to consider evidence offered in support of that motion." *United States v. U.S. Currency in Sum of Six Hundred Sixty Thousand, Two Hundred Dollars*, 242 F. App'x 750, 752 (2d Cir. 2007) (citation omitted).

Subsection (c) of Rule 60 contains a critical limitation: "A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) *no more than a year after the entry of the judgment* or order or the date of the proceeding." Fed. R. Civ. P. 60(c) (emphasis added). This time limitation cannot be avoided merely by invoking the "catch-all" provision of Rule 60(b)(6). *See Liljeberg v. Health Servs. Acquisition Corp.,* 486 U.S. 847, 863 (1988); *Stevens v. Miller*, 676 F.3d 62, 67 (2d Cir. 2012); *Teamsters*, 247 F.3d 370, 391–92 & n.11 (2d Cir. 2001); *Maduakolam v. Columbia Univ.*, 866 F.2d 53, 55 (2d Cir. 1989); *Nemaizer v. Baker,* 793 F.2d 58, 63 (2d Cir.1986). "[I]f the reasons offered for relief from judgment can be considered in one of the more specific clauses of Rule 60(b), such reasons will not justify relief under Rule

60(b)(6)." *Teamsters*, 247 F.3d at 391–92 (citing *Liljeberg,* 486 U.S. at 863; *Nemaizer,* 793 F.2d at 63); *Maduakolam*, 866 F.2d at 55; *see also Ard v. Metro-N. Commuter R.R., Co.*, 2007 WL 9753129, at *3 (D. Conn. Aug. 6, 2007) (Hall, J.). Rule 60(b)(6) cannot provide relief just because the moving party fails to carry his burden under the more applicable subdivision of the Rule. *See Castro v. Bank of New York Mellon as trustee for certificate holders of CWalt Inc., Alternative Loan Tr. 2006-0A11 mortgage pass through certificates, series 2006-OA11*, __ Fed. App'x __, 2021 WL 1207904, at *3 (2d Cir. Mar. 31, 2021); *In re Pinnock*, 833 F. App'x 498, 502 (2d Cir. 2020).

A motion premised on newly discovered evidence should be properly considered under the standard of Rule 60(b)(2). *See Teamsters*, 247 F.3d, at 392. "Rule 60(b)(2) provides relief when the movant presents newly discovered evidence that could not have been discovered earlier and that is relevant to the merits of the litigation." *Boule v. Hutton*, 328 F.3d 84, 95 (2d Cir. 2003).

> To prevail on a motion for relief from a judgment on the grounds of newly discovered evidence, a party must establish that:
>
> > (1) the newly discovered evidence was of facts that existed at the time of trial or other dispositive proceeding, (2) the movant must have been justifiably ignorant of them despite due diligence, (3) the evidence must be admissible and of such importance that it probably would have changed the outcome, and (4) the evidence must not be merely cumulative or impeaching.

Metzler Inv. Gmbh v. Chipotle Mexican Grill, Inc., 970 F.3d 133, 146–47 (2d Cir. 2020) (quoting *Teamsters*, 247 F.3d at 392). The standard under Rule 60(b)(2) is "onerous." *Teamsters*, 247 F.3d at 392.

ARGUMENT

I. The Defendants' Motion is Time-Barred

Defendants' motion, though couched in the language of seeking "extraordinary relief under Rule 60(b)(6)" is in fact premised on what it construes as "recent information" that "was not previously known or revealed." Defs. Mem. In Supp. of Mot. For Relief from Final J. (Doc. 400) at 1 (hereinafter "Defs. Mem."). In other words, defendants now seek relief based on new evidence, and their motion accordingly must be considered under the rubric of the "newly discovered evidence" provision, Rule 60(b)(2). *Teamsters*, 247 F.3d at 392. Defendants cannot escape the one-year time limitation of this rule by instead invoking the catch-all provision of Rule 60(b)(6). *Liljeberg,* 486 U.S. at 863; *Teamsters*, 247 F.3d at 391–92; *Ard*, 2007 WL 9753129, at *3.

Defendants' motion is therefore time barred. Judgment was entered in the case on June 6, 2017, more than four years before Defendants filed the present motion. Doc. 163 (Judgment); Defs. Mem. (Doc. 400). The motion must be denied on that basis alone. Fed. R. Civ. P. 60(c) (noting that a motion based on newly discovered evidence under Rule 60(b)(2) must be made "no more than a year after the entry of the judgment").

Even if Defendants' motion could escape the strict time limitation of Rule 60(b)(2), their motion is still untimely. Rule 60(c) provides that any motion for relief from judgment "must be made within a reasonable time," including motions brought under Rule 60(b)(6). *Rodriguez v. Mitchell*, 252 F.3d 191, 201 (2d Cir. 2001). But the Second Circuit has stated that even "three and one-half years from the date judgment was

entered is [not] a reasonable time" for a motion filed under Rule 60(b)(6). *Id.* It is clearly unreasonable for the defendants to file this motion four years following judgment. *See also Fowlkes v. Adamec*, 622 F. App'x 76, 77 (2d Cir. 2015) (declining to consider Rule 60(b)(6) motion as untimely when it was filed "nearly four years after" the relevant decision); *Satterfield v. Pfizer, Inc.*, 208 F. App'x 59, 61 (2d Cir. 2006) ("[E]ven under Rule 60(b)(6), Satterfield's motion was untimely because it was filed four years after judgment without mitigating circumstances to excuse such delay."); *Williams v. Comm'r of Correction of State of N.Y.*, 122 F.3d 1058 (2d Cir. 1997) (motion filed more than four years after dismissal was untimely)); *Tarascio v. United States*, 198 F.R.D. 321, 323 n.1 (D. Conn. 2000) (Thompson, J.) ("Three years is not 'a reasonable time' in the context of Rule 60(b)."). This is particularly true where, as the following discussion reveals, the evidence could have been discovered much earlier—even before the trial itself.

II. The Defendants' "Evidence" is Not New and Could Have Been Discovered Before Trial

Rule 60(b)(2) requires that the alleged new evidence "could not have been discovered in time to move for a new trial." To obtain relief under Rule 60(b)(2), "the movant must present evidence that is truly newly discovered or could not have been found by due diligence." *U.S. v. Potamkin Cadillac Corp.*, 697 F.2d 491, 493 (2d Cir. 1983) (internal quotation omitted); *see also Metzler Inv. Gmbh*, 970 F.3d at 146–47 ("the movant must have been justifiably ignorant of [the facts] despite due diligence."[1]);

[1] The text of the rule articulated in *Teamsters*, 247 F.3d at 392, requires a moving party to be justifiably ignorant of the *facts* underlying the new evidence; justifiable ignorance of the *evidence* alone is insufficient to satisfy this prong of the rule. This is clear by reading the first and second prongs of the rule in combination. The plaintiff must first establish that "the newly discovered evidence was of facts that existed at the time of trial or other dispositive proceeding," and then that "the movant must have been justifiably ignorant of *them* despite due diligence." *Id.* (emphasis added). The use of the

McWilliams v. New York City Bd. of Educ., 208 F.3d 203 (2d Cir. 2000) ("Evidence that is offered in support of an argument that could have been raised effectively before is not 'new.'").

"[T]he case law requires that a movant provide specific examples of the attempts, if any, undertaken to locate the evidence at an earlier date." *Lorusso v. Borer*, 2006 WL 473729, at *6 (D. Conn. Feb. 28, 2006), *aff'd,* 260 F. App'x 355 (2d Cir. 2008) (citing 11 Charles Alan Wright, Arthur R. Miller & Mary K. Kane, *Federal Practice & Procedure* § 2859, at 303–04 (2d ed. 1995) ("The rule speaks of 'due diligence,' and the moving party must show why he did not have the evidence at the time of the trial or in time to move under Rule 59(b).")); *see also Mpala v. Funaro*, 2017 WL 1364577, at *3 (D. Conn. Apr. 13, 2017) (declining to reopen on the basis of a newly submitted transcript of a surveillance video because "[t]here are no allegations to support a finding that plaintiff was ignorant of the March 23, 2011, transcript."); *Palmer v. Sena*, 474 F. Supp. 2d 353, 355–56 (D. Conn. 2007) ("[A]lthough [the movant] states that [the witness's] affidavit was 'not available at the time of the Court's ruling,' there is no evidence indicating that [the movant] exercised due diligence in order to obtain such a statement….").

Here, the alleged new evidence is vaguely described "information, which concerns a 'cooperation' agreement reached between [witness Aviad] Hack and the plaintiff, pursuant to which Hack was dropped as a defendant in the case in exchange for his testimony." Defs. Mem. at 1 (Doc. 400). But this information is not "new." In fact, defense counsel speculated about such an agreement and discussed its relevance with

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plural pronoun "them" in the second clause clearly refers to the "facts" mentioned in the first clause. Therefore, a plaintiff cannot obtain relief under Rule 60(b)(2) if he knew or should have known the *facts* supported by the new evidence at the time of trial—whether or not he should have known of the new *evidence* at an earlier date.

the Court on the record before trial, and could have verified its existence through the discovery process long ago.

> THE COURT: . . . So the theory would be that Mr. Hack had started out as a defendant, that he switched sides or agreed to testify for the plaintiff because he was concerned that what?
>
> MR. WARD: Concerned about his own civil liability and criminal liability.
>
> THE COURT: But how would — but unless you can establish that there was some kind of quid pro quo, do you have evidence as to why he was no longer a defendant?
> . . . .
>
> MR. WARD: Other than the fact that he was dropped as a defendant and then became the star witness for the plaintiff. I think it goes —
> . . . .
> THE COURT: . . . if he would admit on the stand, yeah, I made a deal with the plaintiff that he's going to drop me from the case in exchange for my testimony, well, then, I think yeah.
>
> MR. WARD: That would be exceptionally relevant.

See Defs. Mem. (Doc. 400) at 4–5 & Defs. Mot. for Relief from Final J. (hereinafter "Defs. Mot."), Ex. A, at 39–40 (Doc. 400-1, at ECF 40–41) (Transcript of 5/2/17 pretrial conference). Defense counsel even sought to admit the unfiled state court complaint, naming Hack as a defendant, as an exhibit for the purpose of proving that such an agreement existed. *See* Doc. 111-4, at 1 (Defendants' proposed trial exhibits, including "September 30, 2015 State Court Complaint: Eliyahu Mirlis v. Rabbi Daniel Greer, Aviad Hack, et al."). During the May 2, 2017, pretrial conference, Attorney Ward argued its relevance:

> MR. WARD: Your Honor, there was also a Superior Court complaint that was actually served but not filed in this case. And I'm not sure if that was the complaint that was served and not filed. I'm being honest here, I don't know if that was the one. But there was a second complaint that was actually served on my client and not filed. So at what point does it become an operating complaint versus an offer and a compromise is I guess the issue. But it most certainly is not

> an offer and a compromise, it's a complaint against both Rabbi Greer and Aviad Hack. It's a draft of the plaintiff's complaint.
> . . . .
>
> MR. WARD: If I could draw your attention to [Fed. R. Ev. 408] Section (b), Your Honor. The Court may admit evidence for another purpose.
>
> THE COURT: What would the other purpose be?
>
> MR. WARD: Bias or prejudice, negating a contention of undue delay, proving an effort of obstruction of a criminal investigation or process. So it goes to [Aviad Hack's] bias and prejudice in this particular matter, that he was a defendant and is no longer a defendant when he decided to testify for the plaintiff.

Defs. Mot., Ex. A, at 43–45 (Doc. 400-1, at ECF 44–46). All defendants needed to raise their suspicion of a cooperation agreement were this draft state court complaint naming Hack as a defendant, exchanged in September 2015, and the subsequent federal complaint served on May 4, 2016, omitting Hack as a defendant. Based on that evidence alone, defense counsel openly speculated on the record, before trial, about the existence of such a cooperation agreement. *See id.* at 39–40 (ECF 40–41), 43–45 (ECF 44–46); *see also id.* at 38 (ECF 39) ("THE COURT: . . . At trial, what would be the relevance of Mr. Hack having a sexual relationship with this person, Yaokov Hatanian? MR. WARD: It goes to his credibility and it goes to his motive for becoming the star witness for the plaintiff when initially he was a defendant in this case. Why did he jump sides? He jumped sides because he was protecting himself from both a civil and criminal investigation."). Plainly, defendants' counsel should have exercised due diligence to uncover any such agreement, if it even existed.

Defendants were free to conduct discovery on this issue before trial. But they did not. They misleadingly represent that "at the time of the deposition the defense was unaware of the Hack-Mirlis cooperation agreement that had been negotiated by their

counsel, and therefore could not have examined Hack about it." Defs. Mem. (Doc. 400) at 11. But this argument is belied by the record. Defense counsel and the Court openly speculated about the possibility and relevance of such an agreement on the record on May 2, 2017, before Hack's deposition was completed. Yet defense counsel still posed no questions to Hack about such an agreement. *See* Defs. Mot., Ex. A at 37 (Doc. 400-1, at ECF 38) (noting that Hack's continued deposition would take place the day after the pretrial hearing); Defs. Mot., Ex. B, at 15 (Doc. 400-1, at ECF 88) (Transcript of 5/9/17 pretrial conference) ("THE COURT: How do you ask the foundational questions that would make that complaint relevant to his bias or interest? He's not here. I take it you did not ask him that at the deposition. MR. WARD: I did not."). Nothing prevented defense counsel from asking about a cooperation agreement at Hack's deposition. They admitted on the record that they instead made a strategic choice to withhold these questions at the deposition. On May 9, 2017, Attorney Nugent stated to the Court: "when defense counsel attended [Hack's] deposition . . . . [l]ines of questioning were held back in anticipation of having this live witness at trial." Defs. Mot., Ex. B, at 12 (Doc. 400-1, at ECF 85). They cannot now, four years after judgment was entered, attempt to reverse their strategic miscalculation by presenting evidence that they could have uncovered years earlier.

Defendants also declined the opportunity to explore the issue before trial through other means. They offer Attorney Errante's affidavit as new evidence today. But the record shows they were well aware of this potential source of relevant evidence before trial, more than four years ago, but similarly declined to pursue it:

> THE COURT: So how do you make [the state court complaint] so that it has a foundation and therefore would be relevant?

> MR. WARD: Possibly through the attorney that [Hack] retained.
> THE COURT: Is he on your witness list?
> MR. WARD: He is not on our witness list.

Defs. Mot., Ex. B, at 15 (Doc. 400-1, at ECF 88). Defendants knowingly declined to pursue Attorney Errante's testimony during discovery or during trial and cannot raise it here as "new evidence."

Defendants fail to make any showing of what steps they took to obtain or locate this evidence before trial. The defendants have described no "specific examples" of any attempts undertaken to locate this testimony, as the law requires. *Lorusso*, 2006 WL 473729, at *6. Defendants' "information" supporting their motion "is not 'truly newly discovered,' … and could have been found and presented to the court earlier with the exercise of due diligence…. [The defendants] have not provided any reason why this evidence was not gathered before the close of discovery and brought to the Court's attention before…." *O'Reilly v. Connecticut Light & Power Co*., 2009 WL 902389, at *1 (D. Conn. Apr. 2, 2009), *aff'd,* 375 F. App'x 44 (2d Cir. 2010) (quoting *Potamkin Cadillac*, 697 F.2d at 493). *see also Palmer v. Sena*, 474 F. Supp. 2d 353, 355–56 (D. Conn. 2007) ("The court agrees with the defendant that this 'new' evidence would have been available to [the movant] had she asked [the witness for it], and thus it finds that this is not the kind of 'new evidence not previously available' that is contemplated under the Rule.").

III. The Defendants' "Evidence" Is Inadmissible Hearsay

To prevail on a Rule 60(b)(2) motion based on new evidence, "[t]he movant must demonstrate that … the evidence [was] admissible …." *Metzler Inv. Gmbh*, 970 F.3d at 147. The defendants fail to satisfy that requirement. Their "new evidence" includes an

affidavit executed by a witness Avroham Notis containing mostly inadmissible hearsay statements allegedly made by Attorney Steven Errante, made at an out of court arbitration proceeding. *See* Defs' Mot., Ex. C (Doc. 400-1, at ECF 161–64). Defendants have stated no exception to Rule 802's prohibition of hearsay testimony that would allow this evidence—or even live testimony from Mr. Notis pertaining to Mr. Errante's alleged out-of-court statements—to be admissible in Court. Nor is there any basis for ensuring the veracity or accuracy of Mr. Notis's statements. Mr. Notis avers "[t]here is not written/stenographic record of this arbitration session," and he attempts to repeat Mr. Errante's statements merely "[t]o the best of [Mr. Notis's] recollection." *Id.* ¶ 8 (Doc. 400-1, at ECF 163). This is clearly insufficient to ensure the reliability of this evidence. It cannot form the basis for providing extraordinary relief under Rule 60(b).

IV. The Defendants' "Evidence" Is Not of Such Importance that It ProbablyWould Have Changed the Outcome

"To prevail on a motion for relief from a judgment on the grounds of newly discovered evidence, a party must establish that . . . the evidence must be admissible and of such importance that it probably would have changed the outcome . . . ." *Metzler Inv. Gmbh.*, 970 F.3d at 147 (citation omitted). The defendants fail to meet that burden here.

> "In considering the effect newly discovered evidence might have on the outcome of a trial, the proper inquiry is whether the evidence makes a prima facie showingthat a different result should have been reached." . . .[The movant] must make [m]ore than a showing of the potential significance of the new evidence ... to justify the granting of a new trial after judgment has become final.

Leniart v. Bundy, 2017 WL 1206393, at *5 (D. Conn. Mar. 30, 2017) (citation omitted), *aff'd sub nom. Leniart v. Ellison*, 761 F. App'x 47 (2d Cir. 2019). Where, as

here, the jury's resolution of the case depended on their assessment of the witnesses' credibility, a stronger showing of significance is required. *See id.* ("[P]laintiff has failed to establish that the evidence would probably produce a different result upon a new trial, particularly where, as here, the resolution of this matter largely depended on the jury's credibility assessments of the witnesses.").

Defendants' own motion concedes that they have not made such a showing. They do not even ask for a new trial or a dismissal of the judgment based on the evidence presented; instead, they ask only for "an evidentiary hearing to permit defendants *to further explore* the circumstances of [Hack's] appearance as a witness in this case, and *whether* extraordinary post-judgment relief under Rule 60(b)(6) is warranted." Defs. Mem. (Doc. 400) at 1 (emphasis added). Their request concedes that their evidence is insufficient to disturb the judgment. It is not the role of the court to disturb the finality of its judgments, years after the fact, based on counsel's speculation that its evidence—evidence that could have been discovered years earlier—has some "potential significance." *See Leniart*, 2017 WL 1206393, at *5.

V. The Defendants' "Evidence" Cannot Form the Basis of Rule 60(b) Relief Because It is Offered Solely for Impeachment Purposes

To prevail on a Rule 60(b) motion, the movant "must establish that … the evidence [is] not . . . merely cumulative or impeaching." *Metzler Inv. Gmbh*, 970 F.3d at 147 (citation omitted). Here, the record establishes that the only relevance of any cooperation agreement between the plaintiff and Hack pertains to Hack's credibility.

> THE COURT: . . . I haven't heard any other articulated basis of relevance other than credibility. Am I right, Mr. Ward?
> MR. WARD: Correct.
> THE COURT: So it's just a credibility issue.

Defs. Mot., Ex. A, at 53 (Doc. 400-1, at ECF 54). Thus, the witness's testimony is offered solely for impeachment purposes. As in *In re Bolin & Co., LLC*, 2012 WL 4370530, at *3 (D. Conn. Sept. 24, 2012), the defendants "fail[] to show that [theproffered evidence] serves a purpose other than merely to impeach [Hack's] credibility." It is therefore insufficient to support extraordinary relief under Rule 60(b)(2). *Metzler Inv. Gmbh*, 970 F.3d at 147 (citation omitted).

CONCLUSION

Once again, defendants have failed to satisfy the "onerous" burden in their unending quest to overturn the judgment against them. Their motion, filed more than four years after judgment was entered, is time barred. In addition, they have shown no due diligence or good cause for their failure to discover evidence of a cooperation agreement before trial, they present no exceptional circumstances justifying the extraordinary relief they seek, and they have failed to show that such evidence probably would have changed the outcome of the trial, as it does not pertain to the merits of the litigation. The Court should deny the defendants' Motion.

Respectfully submitted,

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CERTIFICATION

I hereby certify that a copy of the foregoing was filed electronically and served bymail on anyone unable to accept electronic filing. Notice of this filing will be sent by e- mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing. Parties may access this filing through the Court's system.

/s/ Sarah Steinfeld
Sarah Steinfeld

EXHIBIT B

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ELIYAHU MIRLIS, Plaintiff, v. EDGEWOOD ELM HOUSING, INC., F.O.H., INC., EDGEWOOD VILLAGE, INC., EDGEWOOD CORNERS, INC., and YEDIDEI HAGAN, INC., Defendants.	Civil Action No. 3:19-cv-700 (CSH) **JULY 30, 2020**

RULING ON DEFENDANTS' MOTION TO DISMISS COMPLAINT [Doc. 18]

Haight, Senior District Judge:

Plaintiff brings this diversity action to require the five corporate Defendants to pay an unsatisfied judgment Plaintiff obtained in this Court against a nonparty individual and a nonparty corporation following a jury trial before Judge Shea.

Defendants move [Doc. 18] to dismiss Plaintiff's complaint under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim on which relief can be granted. Plaintiff opposes that motion. The Court has considered the able briefs and oral arguments of counsel. This Ruling decides Defendants' motion.

I

Plaintiff Eliyahu Mirlis, currently a citizen of New Jersey, was from the Fall of 2001 to the Spring of 2005 a boarding student at the Yeshiva of New Haven, Inc. ("the Yeshiva"), a religious

school in New Haven. At this time, Mirlis was between fourteen and seventeen years of age. The dean and president of the board of directors of the Yeshiva was a rabbi named Daniel Greer.

In 2016, Mirlis filed an action in this Court which alleged that while he was a boarding student at the Yeshiva, Daniel Greer had repeatedly sexually abused, exploited and assaulted him. I will refer to that litigation as "the Underlying Action." The Underlying Action was tried before Judge Shea and a jury. The jury found in favor of Mirlis and against Greer and the Yeshiva. On June 6, 2017, Judge Shea entered judgment against Greer and the Yeshiva for compensatory and punitive damages, in the total amount of $21,749,041.10. Greer and the Yeshiva appealed. The Second Circuit affirmed Mirlis's judgment in the Underlying Action against Greer and the Yeshiva. *See Mirlis v. Greer*, 952 F.3d 36 (2d Cir. 2020). The judgment has not been satisfied.

Plaintiff Mirlis commenced this action in an effort to enforce his judgment against Greer and the Yeshiva. The Defendants are five Connecticut corporations. Plaintiff is a citizen of New Jersey. His complaint invokes the Court's diversity jurisdiction. Plaintiff's theory is that these corporations should be required to pay the judgment Plaintiff obtained against Greer and the Yeshiva in the Underlying Action.

Plaintiff filed his complaint against the five Defendant corporations on May 8, 2019. The corporations moved to dismiss the complaint on August 5, 2019. At those times, the appeal of Greer and the Yeshiva from the judgment in the Underlying Action was pending. This Court held consideration of Defendants' motion to dismiss the captioned action in abeyance until the Second Circuit decided the appeal from the judgment in the Underlying Action, since if that appeal was allowed and the Underlying Action judgment vacated, Plaintiff's present action to require these Defendants to pay the judgment would be mooted.

The Second Circuit filed its opinion affirming the judgment in the Underlying Action on March 3, 2020. This Court thereupon restored Defendants' motion to dismiss Plaintiff's Complaint to the calendar, heard oral argument, and now decides the motion.

II

Plaintiff Mirlis's present Complaint undertakes to plead viable claims that the five corporate Defendants are liable to pay the judgment Mirlis obtained against Greer and the Yeshiva in the Underlying Action.

The Defendants are Edgewood Elm Housing, Inc.; F.O.H., Inc.; Edgewood Village, Inc.; Edgewood Corners, Inc.; and Yedidei Hagan, Inc. ("YH"). Each is alleged to be a non-stock corporation, incorporated under Connecticut law with a principal place of business in New Haven, Connecticut. Doc. 1 ("Complaint"), ¶¶ 9-13.

As for F.O.H., Inc., Edgewood Village, and Edgewood Corners, it is alleged that each "owns residential properties in New Haven, Connecticut," and derives the "majority of its income from renting the . . . properties to tenants." *Id.* ¶¶ 10-12. The business activities of Edgewood Elm Housing and Yeididei are not specifically alleged. The Complaint refers at paragraph 53 to "approximately forty-eight properties owned by Defendants." Paragraph 55(a), in describing Edgewood Village, refers to "the twenty-three Properties that it owns." Paragraph 55(b), in describing F.O.H., refers to "the seventeen Properties that it owns." This would seem to leave eight residential properties owned by Edgewood Corners.

The Complaint alleges in substance that Edgewood Corners, Edgewood Village and F.O.H. ("the Upstream Entities") transferred the bulk of the net rent monies for the residential properties they owned to YH and Edgewood Elm ("the Downstream Entities"), who held the funds and then

distributed them to the Yeshiva, Daniel Greer, and his wife, Sarah Greer. *Id.* ¶¶ 54, 57. The purpose of these arrangements, as alleged in paragraph 68, was to hold, shield and distribute assets of the Yeshiva, Daniel Greer and Sarah Greer, without exposing those funds to "the collection activities of creditors, including Plaintiff." *Id.* ¶ 68.

Plaintiff Mirlis's Complaint against the five corporate Defendants asserts two Claims for Relief.

The First Claim for Relief is captioned "Piercing the Corporate Veil – Identity Theory." Plaintiff's theory is that Daniel Greer "completely dominated and controlled Defendants," which "together with D. Greer and the Yeshiva operated as a single enterprise," referred to collectively as "the Enterprise." Doc. 1, ¶ 2. The First Claim asserts that "there was such a unity of interest and ownership among the Yeshiva and Defendants that their independence had in effect ceased or had never begun," *id.* ¶ 70; "Defendants were operated under the complete control of D. Greer to shield the Yeshiva and D. Greer from their creditors," *id*. ¶ 72; "[p]iercing the corporate veil of Defendants to hold them liable for the Judgment will not cause harm to innocent third parties, and therefore is fair and equitable," *id.* ¶ 74; and the Court "should pierce the veil of the Enterprise and hold each of the Defendants liable for the Judgment" in the Underlying Action, *id*. ¶ 75.

The Second Claim for Relief is captioned "Reverse-Piercing the Corporate Veil – Instrumentality Theory." Plaintiff asserts that Daniel Greer "exercised complete domination over the finances, policies and business practices of Defendants so that Defendants had no separate mind, will, or existence of their own," *id.* ¶ 77; Daniel Greer used Defendants' property to perpetrate abuse of the Plaintiff and shield the property from Plaintiff's judgment, *id.* ¶ 78; "[r]everse-piercing the corporate veil of Defendants to hold them liable for the Judgment will not cause harm to innocent

third parties, and therefore is fair and equitable," *id*. ¶ 81; and the Court "should reverse-pierce the veil of the Enterprise and hold each of the Defendants liable for the Judgment," *id*. ¶ 82.

The Wherefore clause with which the Complaint concludes expresses this reverse piercing somewhat differently. Plaintiff there prays at subparagraph (b) for the entry of an order "reverse-piercing the veil *as to D. Greer*" and holding the Defendants liable for the Judgment. *Id.* at 17 (emphasis added).

Defendants move to dismiss this Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6), for failure to state a claim upon which relief can be granted.

III

The standards of review on a motion by a defendant to dismiss a complaint under Rule 12(b)(6) are well established.

The analysis begins with Rule 8(a)(2), which requires that a pleading seeking relief "must contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief." Rule 12(b)(6) provides for dismissal of the complaint if that pleading fails "to state a claim upon which relief can be granted." In order to survive such a motion, the complaint must comply with the standard set forth in the United States Supreme Court's seminal holding in *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Under *Iqbal*, the complaint "must contain sufficient factual matter, accepted as true, to 'state a claim that is plausible on its face.'" *Iqbal*, 556 U.S. at 678 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S 544, 570 (2007)).[1] "A claim has facial plausibility when the plaintiff

[1] The Second Circuit has consistently adhered to the United States Supreme Court's plausibility standard set forth in *Iqbal*. *See, e.g.*, *Lynch v. City of New York*, 952 F.3d 67, 74-75 (2d Cir. 2020), *Gamm v. Sanderson Farms, Inc.*, 944 F.3d 455, 462 (2d Cir. 2019); *Kelleher v. Fred A. Cook, Inc.*, 939 F.3d 465, 467 (2d Cir. 2019); *Kolbasyuk v. Capital Mgmt. Servs., LP,* 918 F.3d 236, 239 (2d Cir. 2019).

pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. The complaint must provide "more than the unadorned, the-defendant-unlawfully-harmed-me accusation." *Id.* "A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" *Id.* (quoting *Twombly*, 550 U.S. at 555).

In determining whether the plaintiff has met this standard, the Court must accept the allegations in the complaint as true, draw all reasonable inferences and view all facts in the light most favorable to the non-moving party. *Trustees of Upstate New York Engineers Pension Fund v. Ivy Asset Mgmt.*, 843 F.3d 561, 566 (2d Cir. 2016), *cert. denied*, 137 S. Ct. 2279, 198 L. Ed. 2d 703 (2017). "[W]hether a complaint states a plausible claim for relief will [ultimately] . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Iqbal,* 556 U.S. at 663-64. When "well-pleaded factual allegations" are present, "a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." *Id.* at 679. Factual disputes do not factor into a plausibility analysis under *Iqbal* and its progeny.

"Although all allegations contained in the complaint are assumed to be true, this tenet is 'inapplicable to legal conclusions.'" *LaMagna v. Brown*, 474 F. App'x 788, 789 (2d Cir. 2012) (quoting *Iqbal*, 556 U.S. at 678). *See also Amaker v. New York State Dept. of Corr. Servs.*, 435 F. App'x 52, 54 (2d Cir. 2011) (same). Accordingly, the Court is not "bound to accept conclusory allegations or legal conclusions masquerading as factual conclusions." *Faber v. Metro. Life Ins. Co.*, 648 F.3d 98, 104 (2d Cir. 2011) (quoting *Rolon v. Henneman*, 517 F.3d 140, 149 (2d Cir. 2008) (internal quotation marks omitted)). "Threadbare recitals of the elements of a cause of action,

supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 555). In sum, "where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct," dismissal is appropriate. *Starr v. Sony BMG Music Entm't*, 592 F.3d 314, 321 (2d Cir. 2010) (quoting *Iqbal*, 556 U.S. at 679).[2]

In deciding a motion to dismiss under Rule 12(b)(6), "the court's task is to assess the legal feasibility of the complaint; it is not to assess the weight of the evidence that might be offered on either side." *Lynch v. City of New York*, 952 F.3d 67, 75 (2d Cir. 2020). "The assessment of whether a complaint's factual allegations plausibly give rise to an entitlement to relief 'does not impose a probability requirement at the pleading stage; it simply calls for enough fact to raise a reasonable expectation that discovery will reveal evidence of illegal' conduct." 952 F.3d at 75 (citing and quoting *Twombly*, 550 U.S. at 556).

IV

Plaintiff's Complaint asserts two claims against the corporate Defendants. Each claim depends upon application of the doctrine known as corporate veil piercing. The question on Defendants' motion to dismiss is whether the Complaint contains sufficient well-pleaded factual matter, accepted by the Court as true, to state claims for veil piercing that are plausible on their face.

Consideration of that question necessarily begins with a winnowing-out of the Complaint's

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[2] In general, in Ruling on a 12(b)(6) motion, the Court considers the pleadings and their attached exhibits. "[W]hen matters outside the pleadings are presented in response to a 12(b)(6) motion," a district court must either "exclude the additional material and decide the motion on the complaint alone" or "convert the motion to one for summary judgment under Fed. R. Civ. P. 56 and afford all parties the opportunity to present supporting material." *Friedl v. City of New York*, 210 F.3d 79, 83 (2d Cir. 2000) (quoting *Fonte v. Bd. of Managers of Cont'l Towers Condo.*, 848 F.2d 24, 25 (2d Cir. 1988)).

contents. The Complaint's two Claims for Relief are preceded by 50 paragraphs (¶¶ 18-68) captioned "Facts Common to All Counts" which are in reality an amalgam of commingled allegations of fact, argumentative declarations, and conclusory assertions. I disregard everything except well-pleaded factual allegations, and from them distill the following facts, which I accept for the purposes of this motion to dismiss.

During the time and events embraced by the pleadings and proof in the Underlying Action, while Plaintiff Mirlis was a boarding student at the Yeshiva in New Haven, Plaintiff was repeatedly and continuously sexually abused by "D. Greer." That is a reference to Daniel Greer; the Complaint also refers to non-party "S. Greer," who is David's wife, Sarah. Daniel Greer, a rabbi, was the president, a director, and in complete control of the Yeshiva. He was also the president, a director, and in complete control of the each of the five corporate Defendants in the case at bar.

The Yeshiva, a non-party, was and is a non-stock corporation, incorporated under the laws of Connecticut, with its principal place of business in New Haven. Each of the five Defendants was and is a Connecticut non-stock corporation with its principal place of business in New Haven. At the relevant times, the boards of directors of the Yeshiva and the Defendants did not have formal meetings or keep minutes. All decisions about the management of the Yeshiva and the Defendants, including decisions to acquire or transfer property between the Yeshiva and the Defendants, were made by Daniel Greer, without holding formal board meetings or obtaining a vote from the board of directors of the Yeshiva or any of the Defendants.

Daniel Greer solely directed the transfer of assets among the Defendants, and from Defendants to himself, the Yeshiva, or his wife, Sarah Greer. Four of the five corporate Defendants, namely, Edgewood Elm Housing, F.O.H., Inc., Edgewood Village, and Edgewood Corners, own

residential properties in New Haven and derive the majority of their income from renting the properties to tenants. The fifth Defendant, Yedidei Hagan, does not own properties; it organizes religious services.

Specifically, Daniel Greer arranged for Defendants Edgewood Corners, Edgewood Village and F.O.H. (called "the Upstream Entities") to transfer the bulk of their net funds, after paying the expenses of their rented properties, to Defendants Yedidei Hagan and Edgewood Elm ("the Downstream Entities"). Yedidei Hagan then distributed those funds to the Yeshiva or on the Yeshiva's behalf, as directed solely by Daniel Greer. The Yeshiva paid salaries and retirement benefits to Daniel Greer and to Sarah Greer.

The Yeshiva and the Defendants have the same accountant. Daniel Greer manages and controls the employment of the accountant and its interaction with the Yeshiva and the Defendants.

The Yeshiva and the Defendants share offices, Post Office boxes and telephone numbers, and do not reimburse each other for the use of each other's services or property.

The theory of Plaintiff's case is that these factual circumstances render the five corporate Defendants liable to pay the unsatisfied judgment Plaintiff obtained against Daniel Greer and the Yeshiva in the Underlying Action. As the captions to his Complaint reveal, Plaintiff is relying upon the doctrine of piercing the corporate veil.

V

Plaintiff's theory of recovery raises the threshold question whether, in this diversity case,[3]

[3] The Complaint sufficiently alleges diversity jurisdiction under 28 U.S.C. § 1332(a). Plaintiff is a citizen of New Jersey; each of the five Defendants is a Connecticut corporation with its principal place of business in New Haven; the events giving rise to the Underlying Action all occurred in Connecticut; and the over-$21,000,000 judgment Plaintiff sues to recover dramatically satisfies the requisite jurisdictional amount.

piercing the corporate veil is a recognized doctrine under the governing law.

The parties agree, and their briefs assume, that this diversity action is governed by the law of Connecticut. That is an appropriate conclusion, given the Connecticut identity of each of the corporate Defendants, and the Connecticut locus of the conduct giving rise to the Underlying Action.

This preliminary question must be answered in the affirmative. Connecticut law recognizes piercing of the corporate veil as an available doctrine in civil litigation. The governing principles are stated by the Connecticut Supreme Court in *McKay v. Longman*, 332 Conn. 394 (2019):

> [T]he concept of piercing the corporate veil is equitable in nature, and no hard and fast rule exists to determine the conditions under which the entity may be disregarded as they vary according to the circumstances of each case. . . . Consequently, this court has not applied traditional veil piercing lightly but, rather, has pierced the veil only under exceptional circumstances, for example, where the corporation is a mere shell, serving no legitimate purpose, and used primarily as an intermediate to perpetuate fraud or promote injustice.

332 Conn. at 433 (citations, internal quotation marks, and ellipses omitted). The equitable nature of corporate veil piercing has generated a considerable body of Connecticut trial court decisions, where chancellors in equity decide the question: to pierce or not to pierce.

In *Longman,* the Connecticut Supreme Court said that "Connecticut first recognized traditional veil piercing claims, by which a court may disregard a corporate fiction to hold individual stockholders liable, in *Zaist v. Olson*, 154 Conn. 563, 227 A.2d 552 (1967)." 332 Conn. at 433. The *Longman* Court's characterization of *Zaist* as a case of first impression is puzzling, since the *Zaist* opinion cites a number of *earlier* Connecticut cases as authority for the proposition that when "the corporation is so manipulated by an individual or another corporate entity as to become a mere puppet or tool for the manipulator, justice may require the courts to disregard the corporate fiction

and impose liability on the real actor." 154 Conn. 574-75 (citing cases, including *Starr Burying Ground Ass'n v. North Lane Cemetery Ass'n.*, 77 Conn. 83, 92, which the Connecticut Supreme Court decided in 1904). In any event, what *Longman* refers to as "traditional veil piercing," which holds an individual liable for a corporation's debt, has been recognized and implemented by Connecticut courts for decades.

The case at bar does not involve *traditional* veil piercing. Plaintiff does not seek to hold an individual liable for a corporate debt. Rather, Plaintiff seeks to hold the Defendant corporations liable for the judgment against Daniel Greer, an individual. This is an exercise in *reverse* veil shifting, which the Supreme Court defined in *Longman*, 332 Conn. at 429: "The principle known as reverse veil piercing is an equitable remedy by which a court imposes liability on a corporation for the acts of a corporate insider." The *Longman* opinion adds: "Courts have generally recognized two forms of reverse veil piercing: insider and outsider," and goes on to say:

> Outsider reverse veil piercing, otherwise known as "third-party reverse piercing" and the type of reverse piercing at issue in the present case, extends the traditional veil piercing doctrine to permit a third-party creditor to pierce the corporate veil to satisfy the debts of an individual shareholder out of the corporation's assets.

332 Conn. at 429-30 (citation, internal quotation marks, and brackets omitted). That quoted paragraph in *Longman* describes the case at bar, in which "the third-party creditor" is Plaintiff Mirlis, the "individual shareholder" debtor is Daniel Greer, and the corporations whose assets Plaintiff pursues are the Defendants.

Longman is in reality a Connecticut Supreme Court case of first impression because the Court squarely addressed the issue of "whether this court recognizes the doctrine of reverse piercing of the corporate veil, and, if so, whether the trial court properly applied the doctrine under the facts

of the present case." *Id.* at 429. The *Longman* Court explained that it had approached the issue once before but left it open:

> This court has addressed reverse veil piercing only once, in *Commissioner of Environmental Protection v. State Five Industrial Park, Inc.,* 304 Conn. 128, 37 A.3d 724 (2012) (*State Five*). Although this court determined that the facts of that case did not warrant reverse veil piercing, and, therefore, did not reach the issue, it observed that reverse veil piercing depends on the facts of the case and recognized equitable concerns regarding adoption of the doctrine but declined to foreclose its adoption in the future when presented with the "appropriate case." The appropriate case, this court explained, would be one in which the doctrine could be recognized under circumstances in which "it achieves its equitable purpose without harming third parties."

Id. at 434-35 (citing and quoting *State Five*).

In *Longman,* the Connecticut Supreme Court found itself presented with "the appropriate case." During the course of its lengthy analysis of the case's circumstances, the Court said: "We conclude that Connecticut recognizes the doctrine of outsider reverse piercing of the corporate veil," *id.* at 432, and added: "Following our dicta in *State Five*, and on the basis of the facts in the present case, we recognize the viability of the doctrine of reverse veil piercing," *id*. at 440. On the merits, the Supreme Court imposed liability on certain corporate entities by means of reverse veil piercing, but declined to do so as to others.

It follows, therefore, that under Connecticut law, the Plaintiff in the case at bar has available to him, in principle, the concept of reverse corporate veil piercing as a means of imposing liability on the Defendant corporations for the unsatisfied judgment in the Underlying Action.[4] The

[4] In a prior Memorandum and Order [Doc. 27], I held that reverse veil piercing was cognizable under Connecticut law for the purposes of this case, although the Legislature had eliminated the doctrine in a Public Act enacted after Plaintiff's Complaint was filed. The Act was not made retroactive, and has no effect on the case at bar, which turns upon whether Plaintiff has a

discussion *infra* considers whether, in practice, Plaintiff's Complaint alleges plausible veil piercing claims against these corporate Defendants.

VI

The state Supreme Court in *Longman,* after making the threshold decision that "Connecticut recognizes the doctrine of outsider reverse piercing of the corporate veil," then embarked upon a lengthy opinion which included a description of the elements of a viable claim for reverse corporate veil piercing.[5] Those requisite elements furnish the governing law for Plaintiff's reverse veil piercing claims in this case. *Longman* decided whether the plaintiff in that case proved the elements of reverse veil piercing claims at trial. This Ruling decides whether Plaintiff in this case sufficiently alleges the elements in his Complaint. In arriving at that decision, it is necessary to consider with care *Longman*'s delineation of the elements of a viable reverse veil piercing claim.

In defining "reverse veil piercing," the *Longman* court borrowed from previously established elements of traditional veil piercing. *Longman* says by way of introduction: "Because reverse veil piercing constitutes an expansion of the traditional veil piercing doctrine, a brief history of traditional veil piercing provides an informative backdrop." 332 Conn. at 432-33. *Longman* then refers to *Zaist v. Olson* as the first Connecticut case to recognize traditional veil piercing, and says: "In *Zaist*, this court held that courts may pierce the corporate veil under one of two theories: either the instrumentality rule or the identity rule." *Id*. at 433.

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viable claim for reverse corporate veil piercing under the Connecticut case law existing at the time Plaintiff filed his Complaint.

[5] Justice Kahn's opinion for the Court comprises 332 Conn. at 399-461. Chief Justice Robinson's concurring opinion comprises 332 Conn. at 461-72. The Court's opinion describes the elements of a reverse veil piercing claim, and then considers whether the plaintiff proved those elements at trial.

The instrumentality and identity rules apply, *Zaist* held, in cases of traditional veil piercing. *Longman* points out that thereafter, when the Connecticut Supreme Court came to consider reverse veil piercing in *State Five*, 304 Conn. 128, it left open the application of that remedy in an "appropriate case," but "outlined, in dicta, three concerns that arise specifically from the application of reverse veil piercing and suggested methods of limiting application of the doctrine." *Longman*, 332 Conn. at 436 (analyzing *State Five*). The concerns expressed in *State Five* had to do with the effect of a reverse veil piercing upon "innocent" nonparties and the possible availability of adequate remedies at law: customary subjects of consideration for a chancellor in equity. *Longman*, the first Connecticut case to implement reverse veil piercing, dealt with those concerns when it said "the following is the proper test to apply when an outsider seeks to reverse pierce the corporate veil," and continued:

> We reiterate that the inquiry is a three part process. In part one, the outsider must first prove that, under the instrumentality and/or identity rules, as set forth in traditional veil piercing cases, the corporate entity has been so controlled and dominated that justice requires liability to be imposed. . . .
> . . .
> If the trial court finds that either the instrumentality or identity rule is met, then it must consider the remaining two parts of the proposed test, i.e., the *State Five* considerations. Under part two, the court must weigh the impact of such action upon innocent investors and innocent secured and unsecured creditors, and, under part three, the court must consider the availability of other remedies the creditor may pursue.

332 Conn. at 440, 442 (citations, internal quotation marks, and ellipses omitted).

Having held that the instrumentality and identity rules are alternative bases for proof satisfying *part one* of the three-part inquiry testing a reverse veil piercing claim, the Court in *Longman* then proceeded to define the elements of those rules. I will quote the *Longman* opinion

on those points at some length, because they control the case at bar, in which Plaintiff invokes the identity theory (First Claim) and the instrumentality theory (Second Claim).

In *Longman* the Connecticut Supreme Court said:

> The instrumentality rule involves an examination of the defendant's relationship to the company and requires the court to determine whether there exists proof of three elements: (1) Control by the defendant, not mere majority or complete stock control, but complete domination, not only of finances but of policy and business practice *in respect to the transaction attacked* so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own; (2) that such control must have been used by the defendant to commit fraud or wrong, to perpetrate the violation of a statutory or other positive legal duty, or a dishonest or unjust act in contravention of the plaintiff's legal rights; *and* (3) that the aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of.

332 Conn. at 441 (citation and internal quotation marks omitted; emphases in original). "In assessing the first prong of the instrumentality rule," the Court continued, a number of specified factors are considered; the Court then said:

> With regard to the second and third prongs of the instrumentality test, that is, (2) whether such control was used to commit a fraud or wrong, and (3) whether that fraud or wrong proximately caused the plaintiff's loss, this court has stated that "it is not enough simply to show that a judgment remains unsatisfied. There must be some wrong beyond the creditor's inability to collect, which is contrary to the creditor's rights, and that wrong must have *proximately caused* the inability to collect."

Id. at 442 (citing and quoting *State Five*, 304 Conn. at 150) (internal quotation marks and ellipses omitted).

Longman then turns to the identity rule:

> The identity rule, which this court has observed complements the instrumentality rule, has one prong, which requires the plaintiff to

> show that "there was such a unity of interest and ownership that the independence of the corporations had in effect ceased or had never begun, in which case an adherence to the fiction of separate identity would serve only to defeat justice and equity by permitting the economic entity to escape liability arising out of an operation conducted by one corporation for the benefit of the whole enterprise."

332 Conn. at 442 (citing and quoting *Zaist,* 154 Conn. at 575, 576) (some internal quotation marks and brackets removed).

It is useful to reiterate *Longman*'s holding that a plaintiff's meeting the instrumentality or identity rule does no more than satisfy the first of three parts of the test for reverse veil piercing. In either event, the trial court must then weigh the *State Five* considerations: the impact of piercing upon innocent nonparties, and the availability to the plaintiff of other remedies.

The Supreme Court's decision in *Longman* summarizes the elements and factors which comprise a viable claim for reverse corporate veil piercing under Connecticut law. To the extent, which is considerable, that the allegations of Plaintiff's Complaint simply parrot the language of *Longman*, I disregard them, on this motion to dismiss, as argumentative, conclusory, or both. The decisive question is whether the Complaint's well-pleaded factual allegations, distilled by the winnowing process in which I have engaged, state plausible claims for that equitable relief.

VII

It is necessary at this juncture to deal with Plaintiff's contention that only the second of his two Claims for Relief is for *reverse* veil piercing. Plaintiff contends that his First Claim for relief, while demanding the remedy of veil piercing, is not *reverse* veil piercing. That argument is made in Plaintiff's Memorandum in Opposition [Doc. 22] to the motion, at 6-7:

> Defendants mischaracterize Plaintiff's claim for veil piercing under

> the instrumentality claim [*sic*][6] in the First Claim for Relief as reverse veil-piercing. That claim, however, alleges traditional horizontal veil piercing in which entities are recognized to be part of the same enterprise because they are so closely intertwined as to have no separate existence.

I cannot accept that argument. It disregards the explicit holdings of the Connecticut Supreme Court in *Longman*, analyzed in Parts V and VI, *supra*. The Court was careful in *Longman* to identify explicitly the instrumentality and identity rules – *both* of them – as alternative bases for satisfying the first of three requisite prongs in the establishment of a claim for *reverse* veil piercing. The identity rule is not, as Defendants contend, invariably the product of *traditional* veil piercing. The *Longman* decision makes the definitive characteristics of *traditional* and *reverse* veil piercing clear when it quotes this passage from the Supreme Court's prior decision in *State Five*:

> In a traditional veil piercing case, a litigant requests that a court disregard the existence of a corporate entity so that the litigant can reach the assets of a corporate insider, usually a majority stockholder. In a reverse piercing action, however, the claimant seeks to reach the assets of a corporation or some other business entity to satisfy claims or a judgment obtained against a corporate insider.

Longman, 332 Conn. at 443 (quoting *State Five*, 304 Conn. at 139) (citations and internal quotation marks omitted).

The case at bar is classic reverse veil piercing. In each of the two claims for relief, Plaintiff seeks to reach the assets of the corporate Defendants to satisfy his judgment against that quintessential insider, Daniel Greer. Plaintiff's characterization of his identity rule claim as "traditional" veil piercing, rather than "reverse" veil piercing, flies in the face of the Connecticut Supreme Court's holdings in *Longman* and *State Five*. I reject Plaintiff's characterization of his

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[6] Plaintiff's First Claim invokes the identity rule, not the instrumentality rule.

First Claim for relief. Plaintiff's two claims are both for reverse corporate veil piercing. They will be evaluated as such on this motion to dismiss.

VIII

This Court must now decide whether reverse veil piercing, as defined by the Connecticut Supreme Court in the cited cases, is applicable to the well-pleaded facts in Plaintiff Mirlis's Complaint against these corporate Defendants. For this federal trial court, tasked with that exercise, the Connecticut Supreme Court's decision in *Longman* is a fertile source of guidance.

The state court trial judge in *Longman* was asked by the plaintiff, Robert McKay, to apply reverse veil piercing to a number of corporate or other entities involved in one or another of separate real estate transactions engineered by the defendant, Stuart Longman. McKay had sued Longman, his former business partner, in a New York court for fraud, and in July 1996 obtained a $3,964,046.86 judgment against Longman, which Longman did not pay. McKay, seeking to enforce that judgment against Longman's assets, attempted to attach "two Connecticut properties: real property located in Ridgefield, which was the location of Longman's family residence (Ridgefield Property), and real property located in Greenwich (Greenwich Property)." 332 Conn. at 400.

Between 2007 and 2010, with McKay's judgment against Longman still unsatisfied, Longman and corporations or entities he controlled entered into a series of land and title transfers involving the Ridgefield and Greenwich properties. In 2010 McKay filed a complaint in a Connecticut state court against Longman "and twenty entities affiliated with him." *Id.* at 401. McKay alleged, *inter alia*, that "the corporate defendants constituted alter egos of Longman and requested that the trial court apply reverse veil piercing to the corporate defendants to the extent necessary to satisfy the New York judgment." *Id.* at 402 (internal quotation marks and brackets

omitted).[7] The challenged land transfers in question were Longman's "November, 2007 transfer of the Ridgefield Property to Sapphire and his February, 2010 transfer of the Greenwich Property to Lurie." *Id*. "Sapphire" was the defendant Sapphire Development, LLC; "Lurie" was the defendant Lurie Investments, LLC; both entities were owned and controlled by Longman.

The trial court, after a bench trial, held that four particular entities (including Sapphire and Lurie) "constitute alter egos of Longman and, as such, applied the doctrine of reverse piercing of the corporate veil to reach their assets to satisfy the plaintiff's foreign judgment." *Id.* at 405. The trial court declined to apply reverse veil piercing to other entities, referred to as "the Solaire entities," *id*. at 459, whose participation in the land transfers in question was limited to funneling money from Longman to Lurie for purchase of the Greenwich Property, and receiving some of the proceeds when, two months later, Lurie "sold the Greenwich Property to a bona fide purchaser for $1,850,000." *Id* at 426-27. The Supreme Court, affirming the trial court's refusal to apply reverse veil piercing to these particular entities, said of them: "Unlike the former four entities, to which the trial court applied reverse veil piercing, Solaire Development, Solaire Management, and Solaire Funding were commercial businesses that provided services on an ongoing basis," *id.* at 448, and continued:

> [T]he trial court declined to reverse pierce the Solaire entities – although it noted that "[t]he plaintiff . . . marshaled the evidence in favor of their treatment as additional sham entities". . . – as it determined that reverse piercing of those entities would have harmed "innocent and unrelated parties," because those entities were "actually engaged in ongoing business activities . . . [regarding] solar power installations."

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[7] McKay's complaint also included claims for fraudulent transfers of the Ridgefield and Greenwich properties, and requests for the imposition of constructive trusts upon the Ridgefield Property and the proceeds from the sale of the Greenwich Property. The trial court gave judgments on those claims and the Connecticut Supreme Court affirmed them, but they play no part in the case's application of the reverse veil piercing doctrine, and I say no more about them.

> . . .
> The principal reason that the trial court refused to reverse the Solaire entities is that granting such relief would affect nonculpable investors, such as Cityscape Capital and Bank of America,[8] which would be prejudiced by allowing the plaintiff "'to attach assets in which they have an interest.'" *State Five, supra*, 304 Conn. at 141 . . . . The trial court did note that "the Solaire entities present the most difficult situation," as "[t]he plaintiff . . . marshaled the evidence in favor of their treatment as additional sham entities." That court also noted, however, that it "heard testimony . . . that [those entities] are engaged in a legitimate business . . . and [t]he concern about impact on innocent parties and the collateral damage to an ongoing business, militate[s] against applying the doctrine to [them]." We conclude that the trial court did not clearly err, as we observe that, although the record revealed that the Solaire entities received transfers from Lurie containing proceeds of the sale of the Greenwich Property, applying reverse piercing to these entities would implicate the concerns raised in *State Five*.

332 Conn. 458, 460. As previously noted, the *State Five* concerns are the impact of reverse veil piercing on innocent nonparties, and the availability of other remedies the plaintiff may pursue.

As for the other defendant entities and the transactions involving the Ridgefield Property, the Supreme Court in *Longman* had no hesitation affirming the trial court's application of the reverse veil piercing doctrine. The Court stated concisely: "Our review of the trial court decision reveals that the court made all the requisite findings to establish instrumentality, fraud, and proximate cause." *Id.* at 451. "The trial court found that 'the element of domination and control' was present," *id*. at 450, and, "regarding whether Longman used his control and dominance to perpetrate a fraud or wrong, the trial court found that the evidence revealed that Longman fraudulently transferred the Ridgefield Property and the Greenwich Property to Sapphire and Lurie, respectively, 'for purposes of avoiding creditors.' . . . With respect to whether the wrong perpetrated proximately caused the

[8] As the result of earlier unrelated transactions, Cityscape Capital and Bank of America had acquired interests in the Solaire entities.

plaintiff's loss, the trial court found that these transfers rendered the plaintiff unable to attach Longman's assets," *id*. at 451. The Supreme Court affirmed all these trial court findings and conclusions.

Thus the plaintiff in *Longman* had established the first of the three prongs of a viable reverse veil piercing claim, based on the instrumentality rule. Two prongs remained for decision, which the Supreme Court felt it necessary to deal with. The Court said: "After applying the instrumentality rule, the trial court considered whether innocent equity holders or creditors would be prejudiced by the piercing and whether adequate remedies at law were available to the plaintiff." *Id.* at 452. The trial court answered both questions in the negative, and consequently applied reverse veil piercing with respect to these defendants and these transactions. The Supreme Court affirmed.

In *Longman,* the Connecticut Supreme Court decided the applicability of reverse veil piercing to facts revealed by a full evidentiary record produced by a plenary bench trial. In the case at bar, this Court must consider the applicability of reverse veil piercing in the context of a defense motion to dismiss the plaintiff's complaint. The question is not whether trial evidence proved that reverse veil piercing was properly applied. Rather, the question is whether the complaint's well-pleaded facts state a plausible claim that reverse veil piercing should be applied, as that doctrine is defined by the Connecticut cases.

IX

What this case comes down to is that Plaintiff Mirlis seeks to subject the five corporate Defendants to reverse veil piercing which, if granted, would render the Defendants' assets available to pay Mirlis's Underlying Action judgment against Daniel Greer and the Yeshiva.

Plaintiff pleads two theories in support of that effort: the identity rule and the instrumentality

rule. These are alternative bases for reverse veil piercing. To obtain that remedy, Plaintiff must pass the first doctrinal test by establishing its requisite elements: identity or instrumentality, fraud, and proximate cause. If Plaintiff makes those showings, he satisfies the first test or prong, and must then satisfy the Court that he passes the second and third tests: by showing that reverse veil piercing is not precluded by prejudice to innocent third parties, or by alternative remedies available to Plaintiff.

Defendants' motion to dismiss turns on whether Plaintiff's Complaint alleges facts sufficient to state claims plausible on their face that he will succeed on these several issues.

The Complaint's factual allegations I am bound to accept are summarized in Part IV. They state plausible claims of identity and/or instrumentality, plus fraud and proximate cause – the elements of the first of three parts of a viable claim for reverse veil piercing.

Those facts, which I accept, demonstrate a group of five Defendant corporations dominated by Daniel Greer, the president and a director of each of them. Greer was in complete control of the corporations, whose boards of directors conducted no formal meetings, took no votes, kept no minutes, and allowed all decisions about the acquisition or transfer of property and assets between the corporations, the Yeshiva, and the Greers personally (D. Greer and S. Greer) to be made by Daniel Greer. The Yeshiva and the corporate Defendants have the same offices, Post Office boxes and telephone numbers, and do not charge each other for the use of each other's services or property. These facts state a plausible claim that Daniel Greer dominated and controlled the Defendant corporations.

The pleaded facts also state a plausible claim that Daniel Greer used his dominance and control of the five Defendants to perpetrate fraud or a wrong which proximately caused injury to Plaintiff. According to those facts, Greer manipulated the corporate Defendants in such a manner

that the residential property rent monies collected by the Upstream Entities were funneled to the Downstream Entities, and thereafter distributed to Daniel Greer and the Yeshiva (defendants in the Underlying Action), as well as to Daniel's wife, Sarah Greer. The effect of these arrangements was to assure Daniel Greer and the Yeshiva income streams, while leaving them without assets to pay creditors, including the judgment Plaintiff obtained against them. It is plausible to think that Daniel Greer employed these corporate maneuvers for the purpose of avoiding payments to his creditors. These facts state a plausible claim for reverse corporation veil piercing, under both the identity and instrumentality tests articulated by the Connecticut cases.

Defendants stress in their briefs that there is no allegation Greer transferred personal assets to the corporations: consequently there can be no veil piercing claim, Defendants insist, because "the money flows in the opposite (and wrong) direction." Doc. 18-1 (Defendants' "Memorandum of Law"), at 4. That argument fails to persuade because it limits corporate veil piercing to the functional and legal equivalent of fraudulent conveyances. The Connecticut Supreme Court's definition of veil piercing paints with a broader brush.

As for the second and third parts of the test for the reverse veil piercing doctrine, referred to as "the *State Five* concerns," no question is presented by the third part, which requires me to consider the availability of other remedies Plaintiff Mirlis might pursue to enforce his multi-million dollar judgment against Daniel Greer and the Yeshiva. Plaintiff has no discernible source of assets from which to collect that judgment other than the assets of the Defendant corporations (which Plaintiff seeks to reach by reverse veil piercing). No additional source by which Greer could pay the judgment against him is suggested by the record. Greer himself is currently incarcerated by Connecticut following his criminal conviction for abusing Plaintiff. The Yeshiva appears to be still

in operation, but its economic situation is surely inadequate to pay the judgment. The availability to Plaintiff of remedies other than reverse veil piercing does not exist in this case.

The closer question has to do with the consideration I must give, as a chancellor in equity, to the impact upon nonparties of an order piercing the veils of the five corporate Defendants and holding them liable to pay the judgment in the Underlying Action. The Connecticut cases hold that such an impact can, in certain circumstances, preclude veil piercing.

The cases discussing this issue typically refer to "innocent" stockholders of a corporation whose shield a plaintiff seeks to pierce in pursuit of the corporation's assets – *innocent* because the stockholders, in this perception, did not participate in the wrongdoing causing plaintiff's injury. That concept is not present in the case at bar because the five Defendants were all Connecticut non-stock corporations; there are no stockholders.

Defendants' Memorandum in support of their motion invites the Court's concern about "the fact that each of the Defendants is a Connecticut non-stock corporation established many years ago for the charitable purpose of providing affordable housing and improving the Edgewood Park neighborhood of New Haven." Doc. 18-1, at 4-5. Defendants criticize Plaintiff for making "almost no mention of the Defendants' donors and beneficiaries who would be substantially harmed by a decision to pierce their corporate veils." *Id*. at 5.[9] Defendants say accusingly:

> Plaintiff asks the Court to force the liquidation of dozens of properties in New Haven that are currently dedicated to providing affordable housing for the community. This would be a disastrous result not only for the New Haven community, but for all nonprofit corporations in Connecticut who could no longer assure donors and volunteers that their contributions will serve their intended purposes.

[9] The construction of the Defendant corporations' sentence is awkward. It is their veils Plaintiff seeks to pierce, not those of the unnamed "donors and beneficiaries."

Id.

This *in terrorem* prediction of the consequences of veil piercing in this case can play no part in deciding Defendants' motion to dismiss the Complaint under Rule 12(b)(6). In that context, I may consider only the factual allegations in the complaint and such additional evidentiary material as the complaint may incorporate by reference. There is nothing in the record before me on this motion that I can presently consider about the establishment of the Defendants for the charitable purpose of providing affordable housing, how long they have been engaged in that worthy endeavor, and who their donors and volunteers may have been.

However, one may fairly equate the "beneficiaries" of Defendants' activities, in Defendants' parlance, with the present tenants of the residential properties certain Defendants own. The Complaint identifies three of the five corporate Defendants as owning approximately 48 residential properties in the Edgewood Park area, and describes those corporations' receipt of funds derived from renting those properties – these are the assets Plaintiff seeks to reach in this action. The Complaint thus alleges the existence of a substantial number of nonparty residential tenants who are "innocent" in the sense that they have nothing to do with Daniel Greer's abuse of the Plaintiff.

The cited Connecticut cases mandate my consideration of the effect of a reverse veil piercing upon those tenants. In order to begin an exploration of that issue, I put a question to counsel for Plaintiff during oral argument. This exchange took place:

> THE COURT: Suppose you win on this litigation and you wind up with a judgment of $21 million against these corporate defendants jointly and separately. Now you've got to enforce that judgment. How do you do that? What do you anticipate or contemplate to be the next step? You've got your new $21 million judgment against these corporate defendants. What happens next?

> MR. CESARONI [counsel for Plaintiff]: Well, I – the way we would have to proceed is to – assuming that there's no voluntary settlement of any type of judgment, which I think – which I can see no evidence of so far, I think we have – the main assets that they appear to have are the 40 or so properties that are owned by defendants. You know, I don't know. I've heard a lot of things being said about their charitable purpose or being low cost. I don't know that. I have no idea what they're rented for, to whom they're rented. I don't have any reason to believe that the defendants of Mr. – if Mr. Mirlis took them by foreclosure, that he wouldn't be a better landlord. There's no way of knowing that.
>
> But the short answer is we would probably proceed to foreclosure on the properties, including all the rental properties, and seek to garnish amounts from bank accounts. You know, we would have to do discovery into where they had transferred funds, if there were fraudulent transfers. I think there would be a multitude of different options based on the particular situation.

Doc. 37 (Hearing Transcript), at 46-47.

Counsel's sensible and pragmatic response to the Court's question reveals that if Plaintiff succeeds on his present action in piercing the corporate Defendants' veils, and thereby renders Defendants liable to pay the Underlying Action judgment, it is possible, even likely, that a time will come when Plaintiff Mirlis forecloses upon and takes title to the Edgewood Park properties where tenants currently reside under leases with one or another of the Defendants. One cannot predict *now* whether, should that eventuality come to pass, a tenant would regard it *then* as favorable, distressing, or neutral. That would depend, presumably, on whether the tenant's lease is extended, terminated or altered: another example of the manner in which lives are altered by the operation of forces beyond an individual's control.

The question thus presented is whether the potential situation in which Defendants' tenants could find themselves is so difficult or extreme that it deprives Plaintiff of the equitable remedy of

reverse veil piercing, for which he has asserted a plausible claim. That question is for my determination, sitting as a chancellor in equity. I am unable to conclude that the justice of the cause (equity's objective) requires Plaintiff, on account of the situation of Defendants' tenants, to forego a reverse veil piercing claim that constitutes Plaintiff's only apparent means of enforcing his just judgment against Daniel Greer for childhood sexual abuse.

X

Pretrial discovery may lead to further evidence which would allow motions under Rule 56 for summary judgment. On this motion by Defendants to dismiss Plaintiff's Complaint against them, the Court concludes, for the foregoing reasons, that the motion fails.

Accordingly, the Court makes this Order:

1. Defendants' Motion [Doc. 18] to dismiss Plaintiff's Complaint is DENIED.

2. Counsel for the parties must confer and submit a revised proposed Scheduling Order for the future governance of the case. That proposed Order must be submitted not later than August 21, 2020.

It is SO ORDERED.

Dated: New Haven, Connecticut
July 30, 2020

/s/Charles S. Haight, Jr.
CHARLES S. HAIGHT, JR.
Senior United States District Judge

EXHIBIT C

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ELIYAHU MIRLIS,

Plaintiff,

v.

EDGEWOOD ELM HOUSING, INC. F.O.H., INC., EDGEWOOD VILLAGE, INC., EDGEWOOD CORNERS, INC., and YEDIDEI HAGAN, INC.,

Defendants.

Civil Action No.
No. 3:19-cv-700 (CSH)

AUGUST 25, 2020

TEMPORARY RESTRAINING ORDER

HAIGHT, Senior District Judge:

The Application for Temporary Restraining Order of plaintiff, Eliyahu Mirlis ("Plaintiff"), having been presented to the Court, and the Court having considered Plaintiff's Application for Temporary Restraining Order together with his Memorandum of Law filed therewith, it is hereby found that there are sufficient grounds for the issuance of a Temporary Restraining Order in as much as it appears that the Debtor will suffer immediate and irreparable injury prior to a hearing on his Application for Prejudgment Remedy and it is hereby:

ORDERED that pending the Court's decision on Plaintiff's Application for Prejudgment Remedy the defendants, Edgewood Elm Housing, Inc. ("Edgewood Elm"), F.O.H., Inc. ("FOH"), Edgewood Village, Inc. ("Edgewood Village"), Edgewood Corners, Inc. ("Edgewood Corners"), and Yedidei Hagan, Inc. ("YH" and collectively, "Defendants"), are enjoined from (a) transferring or encumbering any of their personal property, other than to pay any of their employees, with the

exception of D. Greer, and perform reasonable maintenance on real property they own; or (b) transferring or encumbering any of their real property; and

AND IT IS FURTHER ORDERED that Plaintiff and Defendants shall appear in a teleconference hearing before the United States District Court for the District of Connecticut, on **Wednesday, August 26, 2020,** at **2:00 p.m.** or as soon thereafter as counsel can be heard, for a hearing regarding Plaintiff's Application for Prejudgment Remedy. The attorneys of record are directed to participate in the teleconference by dialing **(877) 336-1829** and entering the Access Code of **5451650**.

It is SO ORDERED.
Signed: New Haven, Connecticut
August 25, 2020

/s/Charles S. Haight, Jr.
CHARLES S. HAIGHT, JR.
Senior United States District Judge